judgments must, therefore, have the same effect in courts of other states as in their own state. *Cheever* v. *Wilson,* 9 Wall. 108; *Board of Public Works* v. *Columbia College,* 17 Wall. 521; *Hancock National Bank* v. *Farnum,* 176 U. S. 640. As want of jurisdiction may always be shown, the determination by a court, in probate proceedings, that the deceased was a resident of that state at the time of his death, is not binding on other states. *Bank of U. S.* v. *Merchant's Bank,* 7 Gill 415; *People* v. *Dawell,* 25 Mich. 247; *Thormann* v. *Frame,* 176 U. S. 350; *Overby* v. *Gordon,* 177 U. S. 214. The states are not uniform as to the conclusiveness of a probate decree of distribution and settlement of an estate. New Jersey seems to hold that such a decree settles the rights of all parties in question. *Exton* v. *Zule,* 14 N. J. Eq. 501. The court in the principal case, therefore, concludes that, as the question of jurisdiction of the New Jersey court was not properly raised, and as the courts of New Jersey consider its probate decree final and binding on all parties, the decision of New York in taxing the property denies full faith and credit in two particulars: "First, in seeking part of an estate which has been finally distributed to those entitled to it under the will; second, in fixing personal responsibility for the tax upon the executors, who had been conclusively exonerated from such liability."

JUDGMENT—VACATING—MERITORIOUS DEFENSE.—Complainant brought an action in equity to vacate a judgment against him, alleging that no summons, complaint, nor process of any kind was served upon him. Defendant demurred to the complaint upon the ground that it did not allege that the complainant had a defense upon the merits to the original suit. The lower court sustained the demurrer, and the Supreme Court, in affirming the decision below, *held* that, where an independent action is brought to vacate a judgment as obtained without jurisdiction, it is necessary to make a showing that the party has, or at the time of entering judgment did have, a defense upon the merits, especially if lack of jurisdiction did not appear on the face of the record. *Brandt* v. *Little* (1907), — Wash. —, 91 Pac. Rep. 765.

The rule as stated by the principal case appears to be supported by the decided preponderance of decisions in the United States. The complaint must show that there was a defense to the original action, either entire or partial, that is, that "the result will be other or different from that already reached." FREEMAN, JUDGMENTS (4th ed.), § 498; *Taggart* v. *Wood,* 20 Iowa 236; *Gregory* v. *Ford,* 14 Cal. 138, 73 Am. Dec. 639; *Piggott* v. *Addicks,* 3 G. Greene (Iowa) 427, 56 Am. Dec. 547; *Secor* v. *Woodward,* 8 Ala. 500; *Coon* v. *Jones,* 10 Iowa 151; *State* v. *Hill,* 50 Ark. 458; *Gilford* v. *Morrison,* 37 Oh. St. 502, 41 Am. Rep. 537; *Colson* v. *Leitch,* 110 Ill. 504; *Meyer* v. *Wilson,* 166 Ind. 651, 76 N. E. 748; *White* v. *Crow,* 110 U. S. 183, 4 Sup. Ct. 71, 28 L. Ed. 113. On the other hand a small, but well-reasoned, body of decisions refuse to accept this principle as an inflexible rule, and judge a particular case upon its own merits. Of course a judgment in personam is undoubtedly void, if the party against whom it was rendered did not appear, and process was not served upon him (1 FREEMAN, JUDGMENTS, 214), consequently it might seem that he is not prejudiced in any way. Such,

however, may not be the result. Mr. Freeman puts it in these words: "The failure to serve process may leave the defendant in ignorance of subsequent proceedings as well as of the entry of judgment, and his first knowledge may be brought to him through a claim that he has lost title to his property by a sale made by authority of the judgment, and that at such sale the property has been struck off at a grossly inadequate price. That one was indebted ought not in equity to preclude him from relief from spoliation, accomplished by the aid of a proceeding judicial in form but lacking the essential element of all judicial proceedings,—jurisdiction of the person condemned. Hence the mere want of a defense on the merits ought not in all cases to be a sufficient answer to a demand for relief, where process was not served on the complainant and he was without knowledge of the pendency of the action." 2 FREEMAN, JUDGMENTS (4th ed.), 875. See also 23 CYC. 1031. The following cases adopt this position: *Mills* v. *Scott* (C. C.), 43 Fed. 452; *Bell* v. *Williams,* 1 Head (Tenn.) 229; *Ryan* v. *Boyd,* 33 Ark. 778; *Blakeslee* v. *Murphy,* 44 Conn. 188; *Mosher* v. *McDonald & Co.,* 128 Iowa 68.

LARCENY—EVIDENCE—POSSESSION OF STOLEN PROPERTY.—The defendant was convicted of the larceny of a mule. The principal evidence was that he was found in possession of the mule four days after it was last seen in the pasture of the owner, and that the defendant explained this possession by saying that he purchased the mule from a stranger. *Held,* the evidence was insufficient to sustain a conviction. *State* v. *McKinney* (1907), — Kan. —, 91 Pac. Rep. 1068.

The majority opinion, in the principal case, recognizes the general rule that unexplained possession of stolen goods is relevant to show that the person having such possession is the taker. WIGMORE ON EVIDENCE, Vol. 1, § 152. But it is argued that the possession of the stolen goods was explained by the explanation of the defendant. JOHNSTON, C. J., MASON and BURCH, J. J., dissent on the ground that whether or not the possession was explained by the defendant was a question for the jury. *State* v. *Seymour,* 7 Idaho 257, 61 Pac. 1033, seems to uphold the majority opinion, but that case is practically overruled by a later case in the same state. *State* v. *Ireland,* 9 Idaho 686, 75 Pac. 257. In *Porter* v. *State,* 45 Tex. Cr. Rep. 66, 73 S. W. 1053, the possession of the stolen goods was not recent. In *Watts* v. *People,* 204 Ill. 233, 68 N. E. 563, the possession was not exclusive. However, see *Stringer* v. *State,* 135 Ala. 60, 33 So. 685, and *Calloway* v. *State,* 111 Ga. 832, 36 S. E. 63, which are not so easily distinguished. Many decisions are to be found which seem in conflict with the principal case, and which hold that it is a question for the jury to determine whether the possession of the stolen goods is or is not explained. *R.* v. *Exall,* 4 F. and F. 922; *Underwood* v. *State,* 72 Ala. 220; *People* v. *Titherington,* 59 Cal. 598; *Young* v. *State,* 24 Fla. 147; *State* v. *Hale,* 12 Ore. 352, 7 Pac. 523; *Flores* v. *State,* 27 Tex. App. 475, 9 S. W. 772; *State* v. *Walters,* 7 Wash. 246, 34 Pac. 938; *Price* v. *Commonwealth,* 21 Grat. 846; *Oxier* v. *U. S.,* 1 Ind. Ter. 85, 38 S. W. 331; *People* v. *Farrington,* 140 Cal. 657, 74 Pac. 288.